



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No. 166/CTK/2018

Assessment Year : 2014-2015

DCIT, Berhampur Circle, Berhampur	Vs.	Shri Badri Narayan Mishra, Prop. M/s. Sai Sitaram construction, I/E, Near LIC Colony, Berhampur.
PAN/GIR No.AJPPM 5300 B		
(Appellant)	..	(Respondent)

Assessee by : None
Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 25/09/ 2018
Date of Pronouncement : 25 /09/ 2018

ORDER

Per N.S.Saini, AM

This is an appeal filed by the revenue against the order of the CIT(A)- 1, Bhubaneswar dated 9.2.2018 for the assessment year 2014-2015.

2. The sole issue involved in this appeal is that the CIT(A) erred in deleting the addition of Rs.55,39,000/- made by the Assessing officer towards unexplained cash credits u/s.68 of the Act.

3. None appeared on behalf of respondent-assessee when the matter was called for hearing. Therefore, we proceed to dispose of the appeal of the revenue exparte qua the respondent-assessee after hearing Id D.R. and on the basis of materials available on record.

4. The brief facts of the case are that the Assessing Officer noticed that the assessee had deposited cash in his bank account No.30095969287 with State Bank of India, ADB, Khodasingh on two dates aggregating to Rs.55,39,000/-. Before the Assessing Officer, it was submitted by the assessee that cash deposits had come from private contract receipts disclosed by the assessee at Rs.1,38,76,600/- in the return of income. The Assessing Officer did not accept the explanation of the assessee mainly on the ground that the assessee failed to produce cash book and name of the persons from whom, the cash was received. Accordingly, the Assessing Officer treated an amount of Rs.55,39,000/- as unexplained cash credit of the assessee u/s.68 of the Act.

5. Before the CIT(A), the assessee submitted that cash book was duly maintained and subjected to tax audit. The cash book was not submitted before the Assessing Officer as the same was destroyed by the cyclone 'hud-hud'.

6. The CIT(A) after considering the assessee's submission deleted the addition.

7. Hence, the revenue is in appeal before us.

7. Ld D.R. relied on the order of the Assessing Officer.

8. After hearing ld D.R. and perusing the materials available on record, we find the assessee had deposited cash in his bank account No.30095969287 with State Bank of India, ADB, Khodasingh on two dates aggregating to Rs.55,39,000/-. The Assessing Officer made addition u/s.68 of the Act on the ground that the assessee failed to produce cash book and names of the persons from whom the cash was received.

9. On appeal, the CIT(A) deleted the addition by observing as under:

"I have considered the facts of the case. There is no dispute that the assessee had disclosed a total receipts of Rs.1,38,76,600/- on account of private contract works. Though the assessee could not produce the cash book before the AO, that fact alone cannot lead to a presumption that the impugned cash deposit of Rs.55,39,000/- came from unaccounted sources and was not a part of the receipts disclosed at Rs. 1,38,76,600/-. It is also found that the AO has picked up cash deposits only on two dates for the purpose of addition u/s.68 and accepted cash deposits on other dates in the same bank account and also in two other bank accounts as explained and has not made any addition for the same. Going by the facts of the case, I do not see any justification on the part of the AO not to accept the claim of the assessee that that the impugned cash deposits represent a part of the private contract receipts disclosed by the assessee at Rs. 1,38,76,600. The AO has also not brought any material on record to prove that the impugned

cash deposits could not have come from the private contract receipts. The assessee has pointed out that the addition could not have been made u/s.68 since there was no amount found credited in the books of the assessee so far as the impugned cash deposits are concerned. The contention of the assessee is correct but it is settled law that referring to a wrong section in the assessment order cannot vitiate the addition if the addition is otherwise sustainable under some other section of **the** Act. In any case, this point is not very relevant to the dispute in appeal.. Since the source of the impugned cash deposits is explainable from the private contract receipts disclosed by the assessee, the addition of Rs.55,39,000/-cannot be sustained. Hence, the same is deleted."

10. The Id D.R. could not bring any cogent and positive material on record to show that the assessee could not have deposited Rs.55,39,000/- out of the contract receipt. Therefore, we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and appeal of the revenue is dismissed.

11. In the result, appeal of the revenue is dismissed..

Order pronounced on 25 /09/2018.

Sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

Cuttack; Dated 25/09/2018
B.K.Parida, SPS

sd/-

(N.S Saini)
ACCOUNTANT MEMBER



Copy of the Order forwarded to :

1. The appellant: DCIT, Berhampur Circle,
Berhampur
2. The Respondent. Shri Badri Narayan Mishra,
Prop. M/s. Sai Sitaram construction, I/E,
Near LIC Colony, Berhampur
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

**Sr. Pvt. Secretary,
ITAT, Cuttack**